IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

CRP.No. 173 of 2007()

AS.199/2002 of ADDL.SUB COURT, ALAPPUZHA
OS.116/1999 of ADDL.MUNSIFF COURT, ALAPPUZHA

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REVN. PETITIONER: PETITIONER/RESPONDENT/DEFENDANT

R.VIJAYAN, VELIYIL HOUSE,
MANNANCHERRY P.O., AMBANAKULANGARA,
ALAPPUZHA.

BY ADV. SRI.J.OM PRAKASH

RESPONDENTS: RESPONDENT/APPELLANT/PLAINTIFF

C.G.DAS, PROPRIETOR,
SINDHU COIR TRADERS, THUMPOLY P.O.,
ALAPPUZHA.

BY ADV. SRI.G.GOPAKUMAR (CHERTHALA)

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 03/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J

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C.R.P. No.173 OF 2007

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Dated this the 3rd day of December 2007

O R D E R

This revision petition is preferred against the judgment of the Addl.Sub Judge, Alappuzha in A.S.No.199 of 2002. It was an appeal preferred against the judgment in O.S.No.116 of 1999 of the Addl.Munsiff's Court, Alappuzha whereby the learned Munsiff dismissed the suit with costs to the defendant. The suit is one for realisation of an amount of Rs.18,750/- with interest on the allegation that the defendant had purchased coir materials from the plaintiff, who was dealt with that business and an amount of Rs.18,750/- is outstanding and in spite of repeated notice, he has not given the amount. Hence the suit.

2. The defendant had denied the entire transaction and contended that he is a Government servant and he has nothing to do with the plaintiff and therefore the suit is liable to be dismissed.

3. In the court below PWs. 1 to 3 were examined and Exts.A1 to A3 were marked. The learned Munsiff found that the documents are not acceptable the evidence is not sufficient and therefore held that the plaintiff

has failed to prove the claim, dismissed the suit. But the appellate court by its decision found that the approach made by the court below was erroneous and therefore held that the documents are sufficient to prove the transaction and non-examination of the defendant also would go a long way to prove that the transaction is true and therefore decreed the suit. It is against that decision, the present C.R.P. is preferred.

4. Learned counsel for the petitioner as well as the respondent were heard in detail. Learned counsel for the petitioner canvasses before me that firstly it is a mandate under Order VII Rule 14 that the document relied on by the plaintiff has to be produced along with the plaint and in case if it is required for daily business an attested copy of the same can be produced and the original can be taken by him. Learned counsel also argues before me that the document is attempted to be relied on by invoking the provisions of Section 34 of the Evidence Act and the materials produced and the evidence adduced are not sufficient to show that it had been properly proved and that the accounts have been regularly kept in the ordinary course of business. He also contends for the position that the court below has failed to appreciate the oral evidence adduced by the parties in the case.

5. On the other hand, learned counsel for the respondent would

contend that it is true that the document had not been produced at the time of the institution of the suit but later produced with the leave of the court and had been marked and the matter has been analysed and so the question of non-production of document at the time of institution of the suit shall not prevent the court from considering it. It is true that Order 7 Rule 14 mandates that the document is to be produced along with the plaint. Learned counsel for the petitioner had cited the decision of this Court reported in Raveendran v. Balakrishnan(2000(1) KLJ 236. In that case, the court held that when no list of documents was also served indicating such documents when the suit was filed, it ought not have been received as it was violative of the mandate contained in Rule 14 of Order 7 C.P.C. Learned counsel then relies upon the decision reported in AIR 2003 SC 4548 and contends for the position that unless and until the account books are properly proved in accordance with the mandate of Section 34, it cannot be looked into at all. Learned counsel would also submit that the evidence adduced in this case is far from satisfactory to uphold the case of the plaintiff. The main objection regarding the application of Order VII Rules 14 to 17, I am afraid it cannot be considered at this revisional stage, especially when it is stated by the trial court that it has been produced along with a petition in November, 2000. So, unless and until it has been received

by the court, the court would not have marked as Exts.A1 to A2(d). It is true that there is mandate under Order VII Rule 14 that documents should be produced along with the suit. But, it is not without any exception. When an application for reception of the document is mentioned in the judgment of the trial court and the court has considered those documents it has only to be inferred that the court allowed that application and looked into same.

Let me analyse the credibility of the document and evidence of PWs.1 to 3. Pw1 is the plaintiff. He had deposed before court that account book has been kept in the ordinary course of business and it is written by him. It is challenged on the ground that he obtained sales tax registration only in 2000 and therefore the account during 1998-99 cannot be accepted. A person who had maintained the account speaks about the genuineness of the account. A solitary lach which is pointed out by the trial court below in paragraph 7 of its judgment is that Ext.A1 does not show a corresponding entry relating to receipt No.375. If it is really a concocted document created for the purpose of the suit, certainly the author or creator would have been more careful and it should have been done very correctly. There is no motive or suggestion given in this case why a plaintiff should file a suit for realisation of the amount for the purchase of coir materials if he has nothing to do with the same. There is no enmity or animosity that is

pleaded or proved. PWs. 2 and 3 are the driver and an employee of the firm. It is deposed by those persons that the defendant has purchased materials and the driver has deposed that he had transported the materials in his vehicle. Why should it be disbelieved. The defendant claims to be the Government employee. A suit notice was sent to him. He did not accept the suit notice. It came back. Similarly, he did not go to the box to deny the transaction. I am conscious of the fact that in a suit for money where the transaction is denied by the defendant the burden is squarely on the plaintiff to establish that fact. It is the preponderance of probability that has to prevail. Here, evidence is only one side. The defendant has not mounted the box at all. Therefore what the defendant suggests cannot be accepted. It is true that there has been delay production of document. But, as stated by me earlier, the first court has decided to accept the document and that has been the subject matter of examination and cross examination. At this stage, this Court cannot go back under Order VII Rule 14 especially when the Code contemplates the court is having the power to receive the document. From these discussions and the preponderance of probabilities I agree with the decision rendered by the Addl.Sub Judge, Alappuzha and I do not find any perversity, irregularity or illegality in the said decision.

Therefore C.R.P. lacks merit and the same is dismissed.

M.N.KRISHNAN, JUDGE

Cdp/-